

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: :  
McFARLANE, : Docket #1:16-cv-07806  
Plaintiff, :  
- against - :  
FIRST UNUM LIFE INSURANCE COMPANY, : New York, New York  
February 13, 2017  
Defendant. :  
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PROCEEDINGS BEFORE  
THE HONORABLE KATHARINE H. PARKER,  
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

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<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-Direct</u>	<u>Re-Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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THE CLERK: Calling case 16-civ-7806, McFarlane  
v. First UNUM.

THE HONORABLE KATHARINE H. PARKER (THE COURT):  
All right, we are here for a discovery conference. There's  
a number of issues before the Court. The first, I have the  
issue of depositions and then the issues concerning  
plaintiff's interrogatories and document requests.

First, I'd like to address plaintiff's request  
for disclosure of the three documents listed on defendant  
First UNUM's privilege log. I have looked at those  
documents *in camera*, and I am of the view that these do  
relate to the administrative record and that they were not  
created because of litigation. So these should be  
produced.

Next I want to talk about plaintiff's requests  
for depositions. So as I understand it, Mr. Delott, you're  
seeking the depositions of two individuals, Adams and  
Kouros, is that correct?

MR. JEFFREY D. DELOTT: Yes. But can I address  
one thing regarding the privileged documents?

THE COURT: Mm-hmm.

MR. DELOTT: At the last hearing I brought up  
that part of the administrative record contained another

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document that specifically referred to an attorney-client consultation. And we've heard that that information would be produced, but subsequently, the amended privilege log did not reference it. And I don't know if -- I would think that whatever is related to that should also at least be produced for an *in camera* review.

THE COURT: I'm not sure what you're referring to.

MR. PATRICK BEGOS: There's a -- I think I can explain. In the administrative record what typically happens is the claims person will have sort of like an activity sheet that says this is what I'm going to do.

THE COURT: Like a log?

MR. BEGOS: Kind of, yes.

And in December -- I think it's December 2015 -- there's one of those activity sheets that essentially said -- and I'm paraphrasing -- I'm going to request a legal review of some question -- I forget what it was. I don't see anything else in the administrative record about it. I think whatever consultation the benefits specialist was looking for didn't happen, but I'm running that down with UNUM. If there is some documentation about some consultation, we'll either produce it based on your Honor's

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ruling or log it. But my best guess right now is there is  
no -- the consultation didn't happen.

THE COURT: Okay. All right. So it's premature  
to deal with that Mr. Delott.

MR. DELOTT: Thank you.

THE COURT: So let's move onto the depositions.  
There are two depositions that you've requested, I believe,  
of Mr. Adams and Mr. Kouros, is that correct?

MR. DELOTT: Adams -- it was my mistake -- it's  
Adam Peters -- I kept saying "Adams" by mistake -- but Adam  
Peters and Peter Kouros.

THE COURT: Who is Adam Peters?

MR. DELOTT: Adam Peters is the claim rep who  
made the, I guess, the approval and the termination. He  
issued the letter that notified the claimant that she was  
being approved for benefits as well as the letter that she  
was being denied or terminated benefits.

THE COURT: And Mr. Kouros, he's a doctor?

MR. DELOTT: He's a doctor who reviewed the file  
both when the claim was approved and when the claim was  
terminated.

THE COURT: And did First UNUM state the reasons  
for the discontinuance of the LTD benefits in the claim

1 denial letter?

2 MR. DELOTT: Well, it provided some reasons that  
3 I don't think are wholly consistent with what's in the  
4 administrative record.  
5

6 THE COURT: Okay, well, the letter was from  
7 Mr. Peters, is that right, as he was reviewing the  
8 information, including any medical information provided by  
9 Dr. Kouros, is that right?

10 MR. DELOTT: Well, he was, you know, under a risk  
11 that he was required to consider the entire administrative  
12 record. It appears that the only evidence that was  
13 considered was, I guess you could call it the time-  
14 concurrent evidence relative to the termination. And I  
15 don't think that -- there's nothing regarding an analysis  
16 of how any of the information in the file for the previous  
17 year and a half, two years, was analyzed at all. That's  
18 what I'm trying to get at in the deposition.

19 THE COURT: Could you just say that more simply  
20 so I understand? What was the specific reason given for a  
21 discontinuance of the benefits?

22 MR. DELOTT: That there didn't appear to be  
23 evidence to support the functional limits, limitations, to  
24 preclude the claimant from working.

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THE COURT: And did the definition of "disability" under the plan remain the same at the time that the benefits were discontinued --

MR. DELOTT: Yes.

THE COURT: -- versus the beginning?

MR. DELOTT: Yes.

THE COURT: Okay. This isn't a situation where there's a change in the --

MR. DELOTT: No.

THE COURT: -- definition of "disability" after 18 months or two years?

MR. DELOTT: Correct.

THE COURT: Okay. All right. And Dr. Kouros -- so you're saying you're trying to get at what, specifically, through a deposition?

MR. DELOTT: Well, I'm trying to -- the benefits were approved, then the benefits were terminated. It seems to me that there either has to be benefits that the condition changed so there was improvement, which means that she's no longer entitled to disability benefits, or after she was approved, they came up with some evidence that indicated she should never have been approved in the first place. That's what I'm trying to get at. There's

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2 nothing about that in the termination letter, there's  
3 nothing about that anywhere in the claim cloud.

4 THE COURT: And why do you need the deposition to  
5 make these arguments?

6 MR. DELOTT: Because the information that I would  
7 need to support these claims is not in the claim file.

8 THE COURT: Well, if you're saying that the  
9 decision discontinuing the benefits is inconsistent with  
10 the claim file, what was submitted in the claim file, why  
11 is it that you also need a deposition? Can't you just  
12 argue from the administrative record that it's  
13 inconsistent?

14 MR. DELOTT: Well, defendant has already  
15 indicated that that's not their theory of the case; they  
16 never even considered whether there was a change in  
17 definition. You know, I'm not seeking discovery to attack  
18 their defenses; the whole purpose of discovery is to find  
19 evidence that will support my claims. My claims are that  
20 there's no evidence regarding her change in condition,  
21 there's no evidence indicating that the original decision  
22 was wrong. That's what I'm trying to get at. It's nowhere  
23 in the file, it's not in any document. And from the four  
24 corners of what's been produced I can't find it; it's not



1  
2 there.

3 THE COURT: So from your review of the file, your  
4 position is that the claim that all of the medical  
5 information remained the same and that the decision that  
6 there was no evidence to support disability was just made  
7 based on no change in information; is that --

8 MR. DELOTT: No, what I'm trying to find out, at  
9 one point -- there's no medical file, there's no medical  
10 test, there's no medical finding that I can find that  
11 indicates there's a change in the fibromyalgia or chronic  
12 fatigue. Those are the two conditions that UNUM found her  
13 disabled. Now, I don't care if there's another doc --  
14 they're going to say, "Well, our doctors reviewed it, and  
15 we don't think there's anything to support it as of this  
16 point in time."

17 Well, I don't care if they're ignoring what  
18 happened previously; they're required to look at everything  
19 that's in the file. To support my claim that what they did  
20 was wrong or at least arbitrary and capricious, I want to  
21 be able to say, "Where's the evidence of any change?  
22 Where's the evidence of any improvement? Where's the  
23 evidence that something was wrong?"

24 Now, if it's not in the file, I don't know if

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they're going to claim that there was some improvement. I can't tell, but I need to know that. That's the purpose of discovery, for me to find out what the theory is going to be. I shouldn't have to wait till summary judgment to say, "Oh, in fact we are going to argue that; we're not going to argue that."

THE COURT: But what I'm hearing from you is that there is nothing in the file that would support either of those so you would be able to argue that there's no basis in the administrative record or in the claim denial letter for taking that position, if I'm understanding what you're saying.

MR. DELOTT: Well, that might be my review. But I'm trying to find out if they have any contention that there is some evidence that supports a change in condition, if there is some evidence that supports improvement, that there is some evidence that says, "Oh, we've got this new exam finding, we've got this new exam test that indicates we never should have approved her in the first place." That's not in the record that I can tell, but I'm not a mind reader. And I shouldn't have to wait until summary judgment to find that out.

THE COURT: And what about Dr. Kouros?

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MR. DELOTT: He's the doctor who reviewed the file both at the time that the claim was approved and the claim was terminated. And the reason it was approved was based upon the symptoms. Again, the termination letter doesn't say anything about what happened to the symptoms. It doesn't say the symptoms got better, got worse, were the same. And that was the whole basis for the original approval. So how did the symptoms change from the beginning till the end? It's not in the file. I need the discovery, the deposition, to find that out.

THE COURT: Did -- Dr. Kouros did not independently examine plaintiff, is that correct?

MR. DELOTT: That's correct.

THE COURT: And so he was looking at information submitted by plaintiff's doctors at the time of the original acceptance of the claim and then also what had been submitted since then at the time of denial, is that right?

MR. DELOTT: That's all he could do because he did not examine, correct.

THE COURT: All right.

MR. DELOTT: So examining the same type of information, he came to opposite conclusions, and I'm

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trying to get to the source of that because I can't find it in his report. It's certainly not in the termination letter.

THE COURT: All right. And is it your position that Dr. Kouros' and Peters' decision on the discontinuance of the LTD benefits was contrary to information submitted by plaintiff's own doctors?

MR. DELOTT: Yes.

THE COURT: All right, Mr. Begos, I'll hear from you on the depositions.

MR. BEGOS: Thank you, your Honor.

I think from your questions you understand at least part of my argument here. But just to go into a little bit of the facts, the claim was approved following a review by Dr. Kouros. And what Dr. Kouros essentially said is based on what's in the file now and what the treating physicians are saying, now, unless there's something contrary in the file, which I don't see, then we'll accept it's reasonable that what the treating physicians are saying is supported.

Then as the claim went on and she was paid for, I think, a year and maybe 14 months, additional medical evidence was gathered, treating physicians were spoken to

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by Dr. Kouros, and then Dr. Kouros, he did a number of reviews along the way; but shortly prior to benefits being terminated, he did a review of every piece of medical evidence in the record including his conversations with the treating physician, which were documented themselves, and said that at that point the evidence we have in front of us doesn't support continuation of benefits.

And then Mr. Peters, he's not a doctor, so there -- oftentimes there's this notion that you have a reviewing doctor and you have a treating doctor, and then the benefits specialist, who is not a doctor, is supposed to weigh the -- you know, that there are two medical opinions that the benefits specialist is supposed to weigh. They don't have the competence to weigh medical opinions. The reason for Dr. Kouros's review is to review the medical evidence and to come up with an evaluation. So then Mr. Peters explained the basis for the termination of benefits, which is essentially what I just said. There's no support for continuation of benefits under the policy definition.

Now I understand Mr. Delott wants to argue this either/or thing; either there was a mistake made when benefits were paid, or her condition improved. We're not

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taking either position. We're certainly not suggesting that there was a mistake made such that the plaintiff is required to return the benefits that First UNUM paid her; those benefits are hers to keep. And there's no contention in Mr. Peters' records or in Dr. Kouros's reviews that her condition improved. She had fibromyalgia at the beginning, she had fibromyalgia at the end.

What changed is the, I guess I'd call it, the longitudinal evidence that showed what was and what wasn't done, what treatments she did and didn't have over the course of time. Some of her doctors changed their opinions a little bit. So there was a different body of evidence at the second decision. And all of that is explained in the record. And Dr. Kouros has multiple reports in the record which explains what he looked at and what conclusions he reached. The letter that Mr. Peters wrote is several pages long -- I forget how many -- 5 or 6 or 7 pages long, with a detailed discussion of what happened. And then Mr. Delott was able to review all that and submit an administrative appeal saying why he thought the decision was incorrect and should be reversed.

And part of the reason we're here talking about Mr. Peters is because Mr. Delott didn't let First UNUM

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finish the administrative appeal, but came to court and said that the, you know, administrative remedies were deemed exhausted and that he's entitled to go right to court. Ordinarily, we would be talking about what was the basis for the appellate determination, but there was no appellate determination here.

So I think, as some of your Honor's questions indicated, everything in the record -- Mr. Delott has everything in the record that he wants to make the argument. If he thinks that he can win by saying either First UNUM made a mistake or her condition improved -- and there's no evidence in the record to support that -- then he wins. He doesn't need to ask Mr. Peters, you know, "Is it true that you don't think that her condition improved?" I mean, that's really -- and the problem I have with that kind of construction is it's asking for a one-sentence summary of a, I think, 1,400-page claim file. Her condition is what it was at different points in time. And I would not want to characterize it as the same, improved, not improved. There was certainly different evidence. There's no dispute that she had fibromyalgia; nobody's claiming that she suddenly got better, but simply that the evidence that was available to First UNUM when it

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terminated benefits was different than the evidence that was available when it paid benefits. And the real thrust of his argument is a company like First UNUM shouldn't give somebody like plaintiff the benefit of the doubt and pay benefits when the evidence that it has without being contradicted appears to be sufficient.

So that's what happened. And I still don't see any reason why deposing Mr. Peters or deposing Dr. Kouros is going to add to anything beyond what's in the record because I will say I've spoken to a lot of plaintiff's people, I've spoken to a lot of doctors, I've defended some of their depositions. Almost to a person they don't remember anything about a claim after, you know, six months or a year after it's been determined. What they remember is what's in the administrative record. So it's not as though Mr. Delott is going to get some sort of statement that says, "Ah, yes, I remember this. This lady was so-and-so, and this is the real reason why I terminated benefits."

THE COURT: Mr. Begos, you've moved to dismiss the complaint on the basis that you haven't finished the appeal, is that right?

MR. BEGOS: Yes.



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2 THE COURT: So you're seeking remand?

3 MR. BEGOS: Well, not remand.

4 THE COURT: Dismissal or --

5 MR. BEGOS: Dismissal of -- there's two claims.

6 All of this discovery relates to the first claim. That  
7 we're seeking to dismiss on the grounds that the plaintiff  
8 didn't exhaust her administrative remedies, yes, your  
9 Honor.

10 THE COURT: Okay. And these are the only  
11 depositions at issue at the moment, is that right?

12 MR. DELOTT: Correct.

13 If I could respond briefly?

14 THE COURT: Sure.

15 MR. DELOTT: You just heard Mr. Begos state that,  
16 based upon additional evidence, they now concluded that  
17 there was no basis to continue. That's what I'm trying to  
18 get at: what additional evidence are they claiming  
19 supported a change, what medical tests? They said there  
20 was something that a treating doctor said that was  
21 different that supported a lack of continuation of  
22 benefits. I don't see that. I want to know what they  
23 contend.

24 THE COURT: Right. But you can make that

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argument from the administrative record. In other words, if you're saying that the decision is inconsistent, that there was no change in the condition based on what was submitted, you're not precluded from making that argument. What I just heard Mr. Begos say is that the claims decision is based on the record, whatever's there. And I don't see why you need a deposition to make the arguments that you're making. There's absolutely no reason, because you can read the administrative record as well as the Court or anybody else can read the administrative record.

MR. DELOTT: I can read the administrative record; I can't read UNUM's mind. I shouldn't have to wait until summary judgment papers are filed to find out what evidence they're claiming supported this discontinuation of benefits. If he's saying that, you know, the doctor or a claims rep isn't going to remember anything, which is also really not credible because before the depositions, they're going to be prepped, they're going to go over at least their letter in the report -- right? I should think that that would refresh your recollection. But the whole purpose of discovery is to find evidence to support your claims. And what I'm trying to find right now is nowhere in the four corners of the administrative record. If

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they --

THE COURT: Right. Which is, frankly, helpful to your position.

MR. DELOTT: But I don't know that. If they were to say -- if they were to give me an answer or if they were to send a letter saying, "We have no evidence of any change in the Functional Capacity of this claimant. We have no evidence of any change or improvement in her medical tests. We have no evidence of any change or improvement in exam finding. We have no evidence of any change at all in the medical information relating to the symptoms. The only evidence we have that's different now is that our doctors reviewed the same evidence, and we're just coming to the opposite conclusion," I'd be happy to accept that.

THE COURT: Right. So you can make a strong argument against -- opposing summary judgment based on that is what I'm hearing. But the other issue is you don't have a letter on appeal, is that correct?

MR. DELOTT: Correct.

THE COURT: Is the appeal still pending? Is that still being processed, or has it been terminated?

MR. BEGOS: It was terminated when the litigation was filed, your Honor.

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THE COURT: So you don't have -- plaintiff does not have a letter from the appeals process describing the reasons for denying the claim?

MR. DELOTT: Well, I do, because the reasons why the claim was denied are in the termination letter.

THE COURT: Right. But you have nothing from an appeals standpoint; you have no letter from an appeals standpoint.

MR. DELOTT: Well, all the information that's in the file up to this point is already in the file. And that was already considered, supposedly, prior to the termination letter being issued. So the reasons, based upon the information that's already in the claim file, are supposed to be in the termination letter.

THE COURT: Okay. All right. I would like to go onto the document requests and interrogatories for the moment. And, Mr. Begos, I'd like you first to go through the specific document requests and interrogatories that you have an issue with. And I have gone through them, but I want -- because I have it from a letter Interrogatory 11, 12, 13, 19, 20; but I think that there may be more. So maybe you can just take me through the specific ones?

MR. BEGOS: Sure. Let me do that. And I have to

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admit that it was one cross-referencing that I didn't do coming in today because I was grouping them together for purposes of the letter.

But we have document requests -- if you just give me one second, I can do that for you. We have, your Honor, Document Requests 1 through 7, 9, 10, 12, and 13 through 20.

THE COURT: Okay. And this is Document 31 -- well, I have your responses to plaintiff's document requests dated January 16, 2017.

MR. BEGOS: Right. And I think those are in Document 30, but, yeah, they were definitely filed by plaintiff, I believe.

THE COURT: Okay. All right. So Document Request No. 1, each medical review that Peter Kouros, Norman Brest and Gary Greenhood prepared for defendant during the last three years. Mr. Delott, are you requesting decisions concerning other claimants in other plans?

MR. DELOTT: Yes. They could be redacted; I don't need any personally identifiable information.

THE COURT: And for what reasons do you need that?

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MR. DELOTT: Well, many reasons. If there's a large proportion of claims that are always denied by these people, then that indicates that, as in-house UNUM doctors, they have a predisposition to deny and terminate claims when they shouldn't. If there are other Norman Brest claims relating to fibromyalgia and he consistently uses the same reasons, such as a lack of neurological findings as a basis to deny the claim, when the Second Circuit has repeatedly said that makes no sense, when that's consistent with the white paper that UNUM had regarding fibromyalgia as a basis -- in effect a guidebook on how to deny those claims, I think that's relevant evidence pertaining to conflict of interest. I mean, I could go on; there are many reasons.

THE COURT: And was this guidebook in effect during the time that the plaintiff's claim was considered?

MR. DELOTT: There's no evidence that it's never been out of service, out of commission. All I can say is that the same excuses that they identified in the termination letter and in the record are consistent with the reasons I've seen in the white paper.

THE COURT: And is --

MR. DELOTT: The white paper is part of the

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administrative record.

THE COURT: Okay. And the reason -- and is the claim denial decision consistent with that policy?

MR. DELOTT: I --

THE COURT: In other words, did the benefit claim denial cite the white paper?

MR. DELOTT: It didn't cite the white paper, but, for instance, it said there's no basis -- the findings in support of the limitations of the fibromyalgia don't make sense because there's no evidence of decreased range of motion, there's no evidence regarding neurological abnormalities, which have absolutely nothing to do with fibromyalgia.

THE COURT: All right. Now -- all right, let's go onto Item 2, which is every claim decision letter that Adam Peters prepared during the last three years.

MR. DELOTT: Yes. Well, for instance --

THE COURT: That doesn't seem excessive to you?

MR. DELOTT: Three years?

THE COURT: Every claim decision for three years regardless of the disability, regardless of the plan, that doesn't seem excessive to you?

MR. DELOTT: I didn't think three years was

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excessive because I've seen five and seven in other cases.  
You know, if you think just limiting it to one year, I can  
be satisfied with one year.

THE COURT: I don't see how claim decisions  
written by someone regarding other people with other kinds  
of disabilities involving other plans with potentially  
other definitions of disability are at all relevant to the  
plaintiff's claim.

MR. DELOTT: It could be, because, for instance,  
if the approvals by Peters are largely based on what the  
treating doctors say and if the denials and terminations  
are based upon what the UNUM doctors say, I think that's  
evidence of a conflict of interest again. It was the  
supreme court in the *Glenn* case that said, you know, when  
you rely on doctors who solely serve the insurance company,  
that's evidence of a conflict.

THE COURT: All right. And then let's look at 3,  
for the last three years, each document concerning any type  
of compensation or benefit from First UNUM that was  
potentially available to these four individuals. And,  
again, why are you contending that's necessary?

MR. DELOTT: Well, I'm trying to find -- I'm  
trying to see if there's a connection between incentive



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2 compensation and performance review or if there's a  
3 performance -- well, I guess that's a different request  
4 number.

5 THE COURT: That's No. 4, is performance reviews.

6 MR. DELOTT: Right. But on 3, if the  
7 compensation -- potential bonus compensation exceeds what  
8 was actually received, you know, is that related to a claim  
9 that -- or some indication that the LR on behalf of any of  
10 these people was deemed excessive; or if they're getting  
11 extra or maximum incentive compensation, is there something  
12 in a performance review that logs the creative way they're  
13 coming up to deny or close cases.

14 THE COURT: Do you have any basis in the  
15 administrative record for having a suspicion or reasonable  
16 belief that these individuals operated under a conflict of  
17 interest?

18 MR. DELOTT: Yes.

19 THE COURT: What is it?

20 MR. DELOTT: Well, everything that was submitted  
21 by the treating doctors support it. I mean, they're the  
22 people who were creating exam findings, sending the people  
23 and reviewing first-hand the actual films as opposed to the  
24 records of the tests. They uniformly -- there was no, you

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know, dissension among them. There's really no reason even to have an in-house doctor review it because there was consensus from all the treating doctors that this person was unable to work in any capacity. So here comes a new review, and all three doctors basically slap one another on the back and rubber-stamp what they say and said, "Yeah, this guy, we're looking at the same material, we're not going to talk about the symptoms because they're -- you know, we're just going to say that the evidence as a whole, vaguely we're reviewing it, and we don't think it supports."

          You know, the doctors, to the extent that they want to get bonuses -- I understand that there's this whole pot, and the more denials that a team or a unit has, you get to partake in that pot. So there are all sorts of incentives or there are all sorts of issues that lead to conflict of interest. You know, the more money that the company makes as a whole, they have this pot that becomes the bonus pot. And they always talk about how the whole company as a whole, everyone participates. What everyone does matters in terms of getting to partake in this bonus. So it's a team effort. So it's almost like a cult mentality. Everyone deny, and you'll get a bigger bonus.

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THE COURT: What from the administrative record -- what information do you have that is leading you to this knowledge?

MR. DELOTT: Not only in this case but in other cases. All the things that I cited, that I allege in the complaint, they're cited in, I think, in my Exhibit B; they have a history of doing this. There's no evidence that they've stopped. To the extent that they do underwriting, they have an assumed liability acceptance rate. When the approval rate starts to get above that, the liability acceptance rate, that indicates there may be possible profitability. So as a business decision, regardless of the merits of the case, they tend to either hold cases back temporarily or deny more cases. And that's what also gets into the reserve. If you want to increase your profitability, you terminate a case; and regardless of whether or not a court has already said that liability no longer exists, they immediately recognize that as a profit.

So, you know, whether it's the money people who are telling the managers and the directors that we have to decrease our LR or increase the profitability, or it's the actual claims people who want to have a better chance of participating in a bigger bonus, you know, the conflict is

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there.

THE COURT: Well, you're already saying that there's a structural conflict of interest and that there's a heightened scrutiny in terms of the Court's review of the claim decision, isn't that right?

MR. DELOTT: Right. And now I'm trying to find a more specific conflict with these particular people.

THE COURT: And why can't you argue conflict of interest based on the information you just provided? Why do you need more discovery to argue that? It seems as if you've already stated information and that there's already a structural conflict of interest, so the Court would give a heightened review, anyway.

MR. DELOTT: The Court doesn't stop -- the Second Circuit doesn't stop there. I don't remember whether it was the -- it was probably your case, the *McCauley* case -- the more evidence you have regarding the conflict of interest, the more weight you give to that in assessment of whether or not it's arbitrary and capricious. So simply saying that there's a structural conflict of interest, the Court could sit there and say, well, that's fine and maybe we'll only give it the minimum amount. But the more evidence that I can provide to the District Court regarding

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the conflict of interest, whether it's generic because of the structural conflict of interest, or case specific, the more weight I can convince the judge to give to that conflict.

THE COURT: But you don't -- as we sit here today, you don't know, you don't have a basis that these particular individuals were somehow more affected by any of these policies that you've already described?

MR. DELOTT: Well, I don't have a smoking gun. And that's the point of discovery. And the mere fact that all the treating doctors unanimously said this person still can't work and there was no change in the symptoms, there was no change in any medical tests, there was no change in any medical exam finding; and all of a sudden, all these doctors come to the same exact opposite conclusion, I think that raises at least a reasonable chance that can lead to a good cause for having additional information accepted by the District Court.

THE COURT: All right. And so I guess your request No. 7, the CV of the individuals also relates to this conflict issue?

MR. DELOTT: Well, defendant already provided a CV and some professional license information, but --

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2 THE COURT: Okay, so that's not an issue.

3 MR. DELOTT: Well, it might be because in their  
4 answer they indicated that they're only producing the non-  
5 privileged information. And I said if they assert that  
6 there was no privileged information withheld, then I  
7 withdraw that objection.

8 MR. BEGOS: There was nothing withheld on the  
9 basis of privilege from --

10 MR. DELOTT: Then I withdraw it.

11 MR. BEGOS: -- the CV or licensing information.

12 THE COURT: Okay, so 7 is not an issue, then;  
13 you've produced that.

14 Okay, so with respect to No. 5, claims procedures  
15 manuals, I take it there's -- you said that there was one  
16 manual already produced, is that right?

17 MR. DELOTT: Well, yes, there's the claim manual  
18 that was produced. And, again, I have sort of a qualified  
19 problem here because I wanted a simple answer is that  
20 everything that's relevant. If they gave me an answer that  
21 that covers everything and not just that here is something  
22 that is responsive, then I withdraw my further objections.

23 THE COURT: Well, is it? Is there anything --  
24 are there any other manuals or policies?

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MR. DELOTT: Well, manuals, training guidelines, instructive memoranda.

MR. BEGOS: I interpreted plaintiff's request -- let me just say the manual is, it's basically an Intranet in the site that's constantly updated. If you printed it out, I don't know how many thousands of pages it would be, but it's a lot. And it's the set of procedures and practices that the entire benefit group within UNUM uses. Now, what I interpreted plaintiff's additional request as, if there's any other piece of paper anywhere in the company that could arguably be considered a policy or a guideline or a practice, either search for it or tell me that nothing like that exists.

Now, with a company the size of First UNUM, with a company of any size, I certainly can't represent that a document doesn't exist. I can say that the claim manual that we produced is where people go when they're deciding claims and there's a question about policies and procedures. That is the compilation of policies and procedures.

THE COURT: That's the key document for --

MR. BEGOS: Yes.

THE COURT: -- the benefits administrators?

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2 MR. BEGOS: Yes. And --

3 THE COURT: So --

4 MR. BEGOS: -- appellate specialists and

5 everybody else involved in the claims process.

6 THE COURT: All right.

7 MR. BEGOS: What I can't say is that, you know,  
8 somebody might not have a piece of paper in a drawer  
9 somewhere that Mr. Delott might argue was a procedure. And  
10 I think it would --

11 THE COURT: Okay.

12 MR. DELOTT: I'm not looking for something that  
13 an isolated person may have. I'm looking for training --

14 THE COURT: It sounds to me like --

15 MR. DELOTT: -- guidelines that may --

16 THE COURT: It sounds like you have the manual  
17 that's used.

18 MR. DELOTT: I do have a manual, yes.

19 THE COURT: So I think that this one sounds moot  
20 based on what Mr. Begos has said.

21 MR. DELOTT: All right.

22 THE COURT: And then No. 6, all documents  
23 concerning procedures for considering these various things  
24 about plaintiff's particular condition of fibromyalgia and



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chronic fatigue syndrome.

MR. BEGOS: And that's really the same thing, your Honor. All of that, to the extent there's a procedure or a practice or a guideline or a policy --

THE COURT: Is in the same book. And I guess the white paper regarding fibromyalgia?

MR. DELOTT: No, I did not find -- I went through the claim manual, and I did not find those four items. And, again, if he's saying that they're there, then I'd like him to identify them because, again, I can't read what UNUM's mind is.

THE COURT: Is there anything other than the claims manual, or is there anything on the Intranet that deals specifically with procedures related to these two conditions?

MR. BEGOS: I am not aware of that.

THE COURT: All right.

MR. BEGOS: I'm happy to go back and ask again. But I'm not aware of any kind of formal procedures or policies or anything, you know, issued or published by a company regarding these things. But again, you know, my concern about these, you know, all kinds of requests is if some doctor has a medical journal on his bookcase --

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THE COURT: I think the Court understands that, and it's not reasonable to require the defendant to search for some lone document in a drawer that nobody remembers.

MR. BEGOS: I will ask if there are any policy --

THE COURT: But, certainly, if you can make the request if there's anything particular in terms of procedures, policies or training related specifically to fibromyalgia or chronic fatigue syndrome, I think that's worth another inquiry.

MR. BEGOS: I'll do that, your Honor.

THE COURT: And then you can let Mr. Delott know.

All right, so then we have 9 and 10, all documents concerning the conveyance of stock to these individuals, and 10 is -- okay, so stock is related to their compensation, the same reasons; and then all documents concerning financial reserve information for plaintiff's LTD claim and any changes in the amount of the reserve.

Do you know whether or not any of the people who are making the claim decision have information about financial reserve information?

MR. DELOTT: Well, that's exactly what *Metlife v. Glenn* says you should look into. You know, I think the

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Court had something to do with separating the financial people from the claims people. That was actually given as an example. If anyone on plaintiff's claim had access to reserve information that would support the claim that the termination was as byproduct of that conflict of interest.

THE COURT: Well, so wouldn't the question be any documents related to financial reserve information for plaintiff's LTD provided to decision makers on her claim?

MR. DELOTT: Well, it didn't have to be provided to, just accessible. I mean, there were directors who had input on this case, there were managers who had input on this case.

THE COURT: Still, that would be narrower.

MR. DELOTT: I'm sorry?

THE COURT: That would be narrower. It would be narrower to say if documents reflecting that information was available or accessible to decision makers on the claim.

MR. DELOTT: Well, it doesn't necessarily have to be decision makers because there were people who were having an input on this claim that didn't necessarily get involved in the evaluating of the medical evidence. There were, you know, there are directors and managers who

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attended roundtable meetings. You know, I don't know what their involvement was. I don't know if they had access to reserve information; but if they did, that's certainly something that I'm entitled to tell Judge Abrams about.

THE COURT: I don't understand how they're connected to the decision makers on the claim. I don't know who you're talking about. Roundtable of discussing plaintiff's claim?

MR. DELOTT: Yes. Whether it was through a roundtable, whether it's through some sort of validation process. There are other people besides this disability specialist who reviewed this claim, who had input on this claim.

THE COURT: Besides Mr. Abrams?

MR. DELOTT: Yes.

MR. BEGOS: Mr. Peters.

THE COURT: Peters.

MR. BEGOS: He didn't have access. The benefits people, the appeals people, the doctors don't have access to reserves.

Can I just make one -- I know you're focusing on Mr. Delott, but I would hope to make just a brief comment on some of this. His argument so far has been the

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administrative record doesn't contain anything to support First UNUM's determination denying benefits. But yet, he's obsessed with things that he says aren't in the record and wouldn't be in the record and that he needs to find out things as to why people at First UNUM made this apparently unsupportable decision that has no basis in the record. And so part of my frustration with this is I've been down this road a lot with plaintiffs, and we have fights over discovery that's absolutely essential. And sometimes they get some of it, but then we never hear about it again because in reality it's not relevant to what the Court is actually looking to determine.

So if Mr. Delott really thinks that there's no question but that his client is entitled to continued benefits, then that's going to be apparent from the administrative record, and he can make his argument. And all of this discovery is a side show.

THE COURT: Yeah, I'm inclined to agree with you, Mr. Begos. And for the --

MR. DELOTT: Well, if I can respond to that?

You know, regardless of whether or not the administrative record already militates the weight in favor of the plaintiff, that's not the issue. Mr. Begos is

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arguing that an arbitrary and capricious standard review is going to apply in this case. If that's true, the Second Circuit has directed -- it was the *McCauley* case -- that the amount of weight that's given to the conflict is proportional to the amount of evidence regarding the conflict that can be produced. So if I can produce more evidence to show that more weight should be given to the conflict rather than less weight, that's what discovery's about. That's what the supreme court is basically directing courts to allow plaintiffs to do in these cases.

MR. BEGOS: And I'll just say I disagree with that. I can go into it in more detail if your Honor wants, but I'm not sure --

THE COURT: No. With respect to one, Document Request No. 1, I'm denying plaintiff's request. I think that's excessive and not proportional to what the plaintiff needs. Same thing with Request No. 2. Same thing with Request No. 3. Same thing with Request No. 4. Five is moot, based on the representations. Six we've already discussed; Mr. Begos will ask his client if there's any additional information or documents concerning procedures with respect to claims for individuals with fibromyalgia or chronic fatigue syndrome. Seven is --

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MR. BEGOS: And could I just say is that formal procedures I'm assuming your Honor is talking about?

THE COURT: Anything that appears written on the Intranet or in a manual provided for the use of benefit claim administrators, either at the initial claim phase or on appeal.

MR. BEGOS: That's fine. Thank you.

THE COURT: And 7 is moot because you've produced the CVs. Nine I'm denying for the same --

MR. DELOTT: You skipped over No. 8. I didn't -- you know, defendant produced the job description, but there was no resume. And I said if they don't have a resume, just tell me, and then I'll withdraw that objection.

MR. BEGOS: I think there is one. I think it's coming. I'll probably be able to -- UNUM's closed today because of the blizzard up in Portland, but I should probably have Mr. Peters' resume this week.

THE COURT: Okay. So that will be moot. Nine I'm denying for the same reason I'm denying the other request concerning personnel and compensation information. Ten, let's hold off on 10 for a second. I'm going to go to the next Document Request, which is 12, which is all

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documents concerning procedures that First UNUM has to ensure its benefits determinations advise of disability comply with the policy and the other items listed there. Mr. Begos, is this the same manual that's already been produced that you've made reference to?

MR. BEGOS: Yes, your Honor.

THE COURT: All right, so --

MR. DELOTT: Well, the issue there is I've gone through that manual. I don't see any section, any chapter that pertains to those.

THE COURT: Well, then you can make your argument that they don't provide that training.

MR. DELOTT: But aren't I allowed to know that prior to summary judgment? Isn't that the purpose of discovery?

THE COURT: Well, Mr. Begos has represented to you that this is the only thing there is, in which case he can't use anything --

MR. DELOTT: No, no, no, that's not what I'm saying. Aren't I entitled to know what they are contending is responsive to those four sections? In other words, he's saying that they've produced the claims manual, and the relevant information pertaining to those four subsections



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is in that claims manual. But I've gone through the claims manual; I don't see anything, from my analysis, that's relevant to those four. Now, if he's saying, you know, if he wants to say, "You're right, those four things aren't covered by a claims manual," I'm happy to accept that. But if he's saying that there is something, then I'd like him to identify it, produce those documents.

THE COURT: Is there anything that specifically addresses --

MR. DELOTT: He specifically said that this is a massive claim file.

MR. BEGOS: Your Honor, I haven't tried to look through the claim manual and to see whether Mr. Delott's formulation of questions is dealt with. But certainly, I know for a fact that the claim manual deals with, you know, deciding claims based on the governing policy. That's on virtually every page of the claim manual. There certainly are procedures dealing with communications with claimants and keeping them informed. So maybe the words don't appear in the way Mr. Delott is looking for them, but there's absolutely information in the claims manual about these questions.

THE COURT: So I'm going to deny your request as

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to 12 based on Mr. Begos's representation. And you can make whatever arguments you can out of the absence of policies. If you think that that's a failure to train and that creates issues, you are free to argue that.

All right, then 13 through 20. So 13, you're looking for documents related to medical opinions supporting the benefit decision; 13, you're looking for that. Fourteen, you're looking for a similar -- you're asking for the defendant to point to documents again; same thing with 15; same thing with 16; same thing with 17; same thing with 18. So these are all requests related to what documents within the administrative record would support or contradict the discontinuation of benefits.

MR. DELOTT: I'm trying to prepare for summary judgment. In order to prepare for summary judgment, I need to have evidence that's going to support my claims. If I have responses that indicate that there are no documents that support a change or an improvement in condition, if there are no documents that indicate that the prior decision was wrong, then in fact I have admissions that will greatly strengthen my summary judgment papers. I shouldn't have to wait until getting their paper to put in my opposition and respond for the first time at evidence.

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If there is something that they're contending -- are documents they're contending provide that information, then I need to know it now. That's how I have to prepare for my summary judgment.

THE COURT: Okay. And then 18, we have -- let me make sure I'm looking at the right one -- I mean 19, I think we're on 19 -- is 19 concerning the individual disability policy?

MR. DELOTT: Yes.

THE COURT: And same with 20, is that right?

MR. DELOTT: That's correct.

THE COURT: You have a copy of the individual disability policy, because your client --

MR. DELOTT: The policy.

THE COURT: -- I assume, paid the premiums for that?

MR. DELOTT: Correct.

THE COURT: And I understand that a different subsidiary of First UNUM was responsible for administering that claim?

MR. BEGOS: Correct.

THE COURT: And are you obtaining the record?

MR. BEGOS: We are. It was supposed to be up to

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Portland today; but, again, they're closed. So hopefully, allowing for a little lateness, it may be this week that at least UNUM will have it. We'll review it. I would think that we'd produce it. I mean, unless there's something really strange, we probably would just produce it. I don't think it's relevant, but --

THE COURT: All right. But her benefits have been approved through -- they were approved through May of 2016 under that policy?

MR. DELOTT: Yes.

THE COURT: And then were they discontinued?

MR. DELOTT: Well, that was the end --

THE COURT: Oh, that was the cap?

MR. BEGOS: Yeah, this was a 24-month policy, I believe.

THE COURT: Okay. I understand. So you'll produce the administrative record on that?

MR. BEGOS: Yeah.

THE COURT: All right. So 19 and 20, First UNUM will produce the administrative record on that.

All right, so what I'm going to allow is one deposition of Mr. Adams.

MR. BEGOS: Peters.

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THE COURT: Peters. Adam Peters. Okay. Of Adam Peters. And that should be limited to issues related to documents relied on for the decision within the administrative record. And I'll permit some questions related to conflict of interest, but I'm not going to permit invasive questions as to his performance reviews, compensation and benefits. I'll permit general questions regarding compensation; for example, whether or not he gets paid a bonus based on claim determinations. And he can explain that generally. But I'm not going to permit invasive questions about compensation benefits, performance, discipline; only those more general questions to get at whether there would be an incentive for the claims -- the benefit decision maker to be operating under a conflict of interest.

If after that deposition there's more information to support a conflict of interest, then we can revisit some of the document requests. But for now, I think I've already said what I'm going to deny in 1 through 9. For 10 I'm going to deny that document request. You can ask Mr. Peters whether he had information on the financial reserve or whether he had access to it, and you can ask him whether he knows if anybody else or had discussions with

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anybody about that. As to -- I think we've dealt with the procedural manuals as to 12. Mr. Begos, just confirmed again that there's nothing else particular on the Intranet that are relevant and responsive to Request No. 12. With respect to 13 through 18, I'm going to deny those requests because you can learn that in the deposition of Mr. Peters. And I think that will be a more efficient way to learn that information.

Okay. Now, are there also interrogatories at issue?

MR. BEGOS: Yes. Your Honor, before we leave Mr. Peters, where should that deposition be? We have a dispute over --

THE COURT: So I understand that Mr. Delott wants to take it here in the courthouse?

MR. BEGOS: Correct. And our position is it needs to be up in Portland, where Mr. Peters works, since he's not a managing agent in the company.

THE COURT: Well, can you take a video deposition?

MR. DELOTT: You know, with the number of documents, that's just going to be too unwieldy. That's just -- it's not going to work; it would take twice as long

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to pass documents back and forth. I don't want to have to give him the documents in advance. That really doesn't work.

THE COURT: Okay.

MR. DELOTT: I mean, I --

THE COURT: So then I --

MR. BEGOS: Well, I would just say that he's limited to the administrative record, so Mr. Peters could be sitting in Portland with the administrative record in front of him. It's Bates stamped, and Mr. Delott can refer him to a page number, and Mr. Peters can turn to that page number, and he can ask him whatever questions he wants. And that way Mr. Delott doesn't have to travel to Portland, Mr. Peters, who's not a managing agent, doesn't have to be brought down to New York to testify, and it would seem that that would accomplish everybody's goals.

MR. DELOTT: I don't believe it does. You know, I don't want to be able to -- I don't want to be in a position where I can't see who else is in the room. I don't want to be in a position where I can't see, you know, hear what's going on. It's far more cumbersome. You know, I don't know if there's -- you know, I don't want to have to even speculate as to information that's being provided

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2 when I'm not in the room. But even putting that aside, I  
3 want to be able to see up close -- I mean, a video  
4 deposition's really not going to let me view the demeanor.  
5 You know, there's a very good chance both summary judgment  
6 motions can be denied. The Court can then move for a bench  
7 trial, and a bench trial can require live testimony. I  
8 mean, that's another reason why I'm entitled to assess the  
9 demeanor. I mean, there are -- you know, besides that,  
10 there's also an outside possibility, if the judge wants to  
11 proceed with Rule 39, that there could be a jury trial. I  
12 mean, there are multiple reasons why a video --

13 THE COURT: Okay, so you're in Melville, you're  
14 in Sanford, and the --

15 MR. BEGOS: I have an office in midtown  
16 Manhattan.

17 THE COURT: And the witness is in Portland.

18 MR. BEGOS: Can I just respond briefly to what  
19 Mr. Delott said?

20 THE COURT: Sure.

21 MR. BEGOS: Everything he said is a vanishingly  
22 small probability. You know, have there been trials in  
23 ERISA cases? A couple, where witnesses have testified.  
24 But if Mr. Delott thinks that that's a possibility here and



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thinks that it's important to look into the witness's eyes, then he certainly can do that in Portland. But I think there's no -- the Court shouldn't order Mr. Peters, who's a nonparty, to come down to New York to testify; and I think the video deposition is an excellent compromise solution here. And if it's not satisfactory to Mr. Delott, he's free to come up to Portland to depose Mr. Peters. But I don't think because he's not satisfied with that and because he thinks there's a, you know, half a percent chance that Mr. Peters may testify in this case, which I think is nonexistent, that Mr. Peters should have to come down to New York to satisfy Mr. Delott.

MR. DELOTT: Well, it's a false premise that he's a nonparty. UNUM's claim representatives have been compelled to come into the forum and be deposed multiple times. I cite many of those cases; most of them are his cases. And as for it being a rarity that a trial might require live witness testimony, that's his *McCauley* case. So, I mean, it's not that rare if -- I mean, he's already involved in one of those cases. But it's also the inconvenience to me. I mean, this is a case where UNUM registered to do business in the state, in the forum.

THE COURT: I'm going to -- if you're very

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opposed to the video deposition, I'm going to order the deposition to take place in New York. It's the plaintiff's prerogative whether he wants to take the deposition in the courthouse versus your office. So if you want to take it in the courthouse, you can follow the procedures to get a deposition room in the courthouse. But it's going to be limited in time to the seven hours -- and probably you need less than that. But you'll have that amount of time permitted under the rules.

All right, can we move to interrogatories?

So I have the interrogatories, Mr. Begos, Document 32, which ones are we dealing with now?

MR. BEGOS: My list, your Honor, is 2 through 8 and 10 through 13.

THE COURT: Okay, so 2 -- 2 deals with the same issue as the document request, and I think you can deal with that on the deposition of Mr. Peters. Same thing for interrogatory No. 3; same thing for interrogatory 4; same thing for interrogatory 5; same thing for interrogatory 8; same thing for 10. Okay, so for those interrogatories I'm going to deny -- I'll grant -- I guess this is plaintiff's motion to compel?

MR. DELOTT: Yes.

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THE COURT: So I'm going to deny as to those requests because I think you can get the answers in the deposition of Mr. Peters.

MR. DELOTT: And if Peters is unable to provide those answers, will I be able to have those interrogatories and document requests?

THE COURT: You can reapply to the extent it's necessary.

MR. DELOTT: Understood.

THE COURT: Okay, so then let's move to the remainder, which I believe would be 7. So that's the financial --

MR. BEGOS: Six, as well, your Honor, which is --

THE COURT: Oh, the medicals. Yes. Thank you. So during the last -- the medical -- the number of medical file reviews. I'm going to deny that request. Again, I think that this is excessive and not proportional to the needs of the case. In terms of 7, if after you depose Mr. Peters and you learn information that brings the financial reserve information into relevance, then we can reconsider No. 7. But for now, the motion to compel is denied.

And the remaining ones, I think 11, 12 and 13

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deal with the individual policy as compared to the group policy, is that right, Mr. Delott?

MR. DELOTT: Well, yes. I mean, they don't track the document requests, but they do relate to the individual policy.

THE COURT: So you're going to get the administrative record for the individual --

MR. DELOTT: So that takes care of No. 11, yes.

THE COURT: You're going to get the administrative record. So I think that takes care of No. 11. No. 12, how the definitions of disability differed, you're going to have that just from the two different policies, which I believe you have. The definitions of disability will be set forth in the policy documents.

MR. DELOTT: Yes. But I'm entitled to understand what their contention is if there's a difference.

THE COURT: Well, if the words are the same, they're the same.

MR. DELOTT: Well, the words might be the same, but if they're interpreting differently the same words --

THE COURT: But the problem with this question is it's a contention interrogatory. It's premature for

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contention interrogatories. Under the Southern District rules you're not permitted to do a contention interrogatory at the beginning stage of a case. And at this point you don't know whether Mr. Peters even considered or knew about the individual disability policy. So you can ask him that question when you depose him. If he didn't know about or didn't consider the definition of disability under that policy, I don't see how it's relevant.

MR. DELOTT: Well, I can tell you how it's relevant because under the claims manual that UNUM just produced, this is called a "common claim," and they're supposed to reference the common claim, including IDI, who they specifically reference.

But I just want to clarify, are you saying that -- I mean, there's a conference -- a scheduling order, and there's a discovery cutoff point, which I believe is in several weeks. Are you saying that I'm going to be allowed to ask contention interrogatories after the discovery cutoff? Because if I can't ask contention interrogatories now, when can I?

THE COURT: Well, it seems to me, based on what you just said, you can ask Mr. Peters this question based on the claim policy. When will you be able to take that

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deposition of Mr. Peters?

MR. BEGOS: Well, I was going to bring that up. Generally there is significantly greater lead time to get somebody down here, because it requires a couple of people coming down. And I know from prior experience that, you know, managers don't like to let people go. So generally it has taken a couple of months to get a mutual -- you know, a date that's convenient to everybody to have a witness down in New York. I don't know Mr. Peters' availability. I don't know off the top of my head the availability of in-house counsel, who would also be coming down for that deposition.

THE COURT: All right. Let me just pull up the Case Management Plan. Fact discovery is to be completed by April 17.

MR. DELOTT: I thought it was March.

THE COURT: April 17. Depositions shall be completed by March 17. No additional parties may be joined after today. So it's still early in the discovery of this case. You can ask a contention interrogatory in March, after -- you can ask this contention interrogatory in March after the deposition of Mr. Peters.

MR. BEGOS: Your Honor, can I just, before we

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leave the subject of 12, because I heard your Honor saying that Mr. Delott could ask Mr. Peters that question. And, you know, if he asks him that in a deposition, I'm going to object to it because it's calling for a legal conclusion that Mr. Peters is not competent to give, to look at two definitions of disability and explain whether they're different and what the difference is. I think it would be appropriate, as your Honor initially said, that if Mr. Peters looked at the other policy and actually made some determination in his mind that there's a difference, that's fair game. But to ask him to look at two policies and interpret them for Mr. Delott is improper.

THE COURT: Well, he's -- what I think is appropriate to ask Mr. Peters is if he was aware of the individual policy, if he has ever adjudicated a claim under that particular policy, and from his understanding as a benefit claim administrator does he read that definition in a different way than he does the definition of disability under the group policy. I think those are not legal questions; I think you can ask those questions.

And in terms of 13, this is not an appropriate question for Mr. Peters because we know that Mr. Peters wasn't involved with the individual claim. And, frankly,

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based on the information that's been provided to the Court so far, it doesn't appear that there was any reconciliation. There was one entity making one decision under the individual policy and another entity making a decision under the group policy, and that's the way it was. But you're going to get the administrative record, and you can pose this contention interrogatory, if you wish, in March. Or we'll just -- I don't think there's a need to re-serve it; I think if you're not going to withdraw it and you're going to keep it, then defendant can answer it by no later than April 1, which will be after production of the administrative record on the individual claim, after the depositions. Okay.

So I think that addresses all of the interrogatories that are at issue, the depositions, and the document requests. And I understand there's another dispute brewing that's not ripe yet. What is happening with that?

MR. BEGOS: There's three additional discovery requests that we received in the last couple of weeks. The response to the second set of interrogatories and document requests is due on the 16th, I believe. And I just sent Mr. Delott an e-mail this morning asking if we could put



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that off for two weeks because people are unavailable to answer them. I mean, the likelihood is we'll probably be objecting to most of them. But I'd like to have two weeks to respond. The response to the third set of discovery requests, which contains interrogatories and document requests, is due --

MR. DELOTT: It contains a single interrogatory and document request.

MR. BEGOS: Okay. That's due sometime in March; I don't remember the date.

THE COURT: To the extent they're contention interrogatories, defendant's due date will be April 1 for all contention interrogatories, consistent with Southern District procedural rules. To the extent they are interrogatories seeking people with information and knowledge about certain things, that's a different situation.

All right, and so that's -- in terms of the -- what's the deadline that you're requesting?

MR. BEGOS: For the second set, I'd request two weeks from the 16th. Let's see, I put that in an e-mail to Mr. Delott -- so two weeks from Thursday would be great.

THE COURT: Meaning March 2?

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2 MR. BEGOS: Yes.

3 THE COURT: And are there documents that you're  
4 seeking --

5 MR. BEGOS: Most of these, your Honor, are  
6 related to the things that you already ruled on. So there  
7 are, you know, documents regarding liability acceptance  
8 rates for disability claim specialists involved in the  
9 claim, documents concerning the reserve. So there's, you  
10 know, slight nuances, but they're -- I think most of them  
11 are similar to what you already ruled on.

12 THE COURT: So I'm going to -- okay, you can have  
13 until the 30th to respond to those. And --

14 MR. BEGOS: The --

15 THE COURT: I think it's --

16 MR. BEGOS: -- the 2nd?

17 THE COURT: I'm sorry, the 2nd. I'm looking  
18 at -- my cursor's on the wrong day -- the 2nd of March.  
19 And you should schedule the deposition of Mr. Peters within  
20 the next few weeks. And --

21 MR. BEGOS: I'll do my best on that.

22 THE COURT: Mr. Delott, what I'd like you to do  
23 is take that deposition, review the additional information  
24 that's being produced to you. And at this point you've

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served quite a number of interrogatories and document requests. I'm going to instruct you not to file any ones that are redundant of ones that already have been served. And if you want to renew your requests for particular documents, you can do that through a letter to First UNUM.

MR. DELOTT: Right. Following the depo.

THE COURT: Following the depo. Exactly. But let's not create additional work for responding. If you already have in sum and substance asked for the types of documents, you don't need to serve another document for the defendant to answer.

MR. DELOTT: I'm sorry, but I got a little confused. I thought I heard February 30, and I heard March 2.

THE COURT: February 2 -- wait a minute. Hold on. March 2 is the day that defendant will provide responses and objections to your more recent document requests and interrogatories. March 17 is the cutoff for depositions. Mr. Peters' deposition should be scheduled prior to then. You may renew requests for documents or serve additional contention interrogatories, to the extent they are not redundant of what you have already served, after you have deposed Mr. Peters. And defendant's time to

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answer contention interrogatories will be extended to April 1 -- any existing contention interrogatories, which are just the two, essentially, that we went over today and any new ones that you're dealing with now.

Anything else?

MR. DELOTT: Referring to No. 10 and 13 through 18?

THE COURT: Yes.

MR. BEGOS: No, it's not 13 through 18. Those were --

MR. DELOTT: No, those are the documents.

THE COURT: Those are document requests.

MR. DELOTT: Right.

THE COURT: I think it was just --

MR. BEGOS: Twelve and 13.

THE COURT: -- 12 and 13.

MR. BEGOS: One quick thing about the deposition location. I know that, as you said, it's Mr. Delott's choice as to where to do it. From our conversations trying to resolve this dispute, his belief that it should be at the courthouse was that there would be more ready access to your Honor to the extent there were disputes arising during the deposition. My feeling would be a phone call would be

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just as -- if your Honor's available, your Honor's available. But perhaps -- I guess I'm asking for your Honor's point of view --

MR. DELOTT: I gave that as one example.

MR. BEGOS: -- as to whether there's an advantage to us having the deposition at the courthouse to the extent Mr. Delott sees a need to reach out to your Honor during the deposition. Because I'm still holding out hope that I can convince him to do it at my office in Manhattan.

THE COURT: I don't -- I can come to a courtroom as fast as I can answer a phone. And when I'm available, I'm available. So I don't even know what day it is or whether I'll be here, so -- (Stopped talking.)

MR. BEGOS: Right. I guess the question that I had -- and I asked it very poorly is -- from your Honor's perspective, if there is a dispute during the deposition, is it better that we're here in the courthouse or calling in by phone, or does it make no difference to your Honor?

THE COURT: It makes no difference.

MR. BEGOS: Okay. Thank you.

THE COURT: All right. Anything else?

MR. BEGOS: No, your Honor.

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THE COURT: Anything else?

MR. DELOTT: No, your Honor.

THE COURT: Okay. Have a good afternoon.

(Whereupon, the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of McFarlane v. First UNUM Life Insurance Company, Docket #1:16-cv-07806-RA-KHP, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature\_\_\_\_\_

Carole Ludwig

Date: February 20, 2017